

MONTANA LEGISLATIVE HISTORY

Chapter 555 19 85

Bill H 547 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 2/14 ✓ c

2/15 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3/6 ✓ c

3/20 ✓ c

_____ c

_____ c

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Chapter

Page

- WATER TREATMENT REVOLVING FUND; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 75-5-1112, 75-5-1113, AND 75-5-1121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3212
- 554 (*House Bill No. 524; McKee*) AN ACT REVISING THE POPULATION AND ECONOMIC WELL-BEING REQUIREMENTS TO QUALIFY AS A RESORT COMMUNITY; EXCLUDING GOODS AND SERVICES SOLD FOR RESALE FROM THE RESORT TAX; REQUIRING NOTICE PRIOR TO THE ELECTION OF THE GOODS AND SERVICES SUBJECT TO THE RESORT TAX; AMENDING SECTIONS 7-6-4461, 7-6-4463, AND 7-6-4464, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3225
- 555 (*House Bill No. 547; Clark*) AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; ALLOWING THE SENTENCING ORDER TO INCORPORATE BY REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR SUPERVISED RELEASE; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS. 3228
- 556 (*House Bill No. 576; Grady*) AN ACT REVISING THE TYPES OF FUNDS SUBJECT TO APPROPRIATION; GENERALLY REVISING THE LAW CONCERNING BUDGET AMENDMENTS; REQUIRING CERTAIN FEES AND CHARGES TO BE COMMENSURATE WITH COSTS; REQUIRING AN AUDIT AND BUDGET ANALYSIS OF CERTAIN FUND TYPES; AMENDING SECTIONS 2-8-304, 17-2-103, 17-7-402, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE. 3230
- 557 (*House Bill No. 594; Bergsagel*) AN ACT PROVIDING FOR THE FINANCING OF INSTITUTIONAL FACILITIES; AUTHORIZING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO ENTER INTO A LOAN AGREEMENT WITH THE MONTANA HEALTH FACILITY AUTHORITY FOR THE PURPOSE OF FINANCING THE COSTS OF ACQUIRING, CONSTRUCTING, AND EQUIPPING FACILITIES FOR THE MENTALLY ILL AT THE MONTANA STATE HOSPITAL IN WARM SPRINGS, INCLUDING THE ESTABLISHMENT OF RESERVES AND THE PAYMENT OF THE COSTS OF THE FINANCING; AUTHORIZING THE CREATION OF A SPECIAL LIMITED OBLIGATION OF THE DEPARTMENT; PROVIDING A STATUTORY APPROPRIATION AND AN APPROPRIATION OF LOAN PROCEEDS; AUTHORIZING THE PAYMENT OF THE SPECIAL LIMITED OBLIGATION FROM FACILITY REVENUE; EXPANDING THE ADULT CORRECTIONS SERVICES TO INCLUDE THE FORENSIC UNIT AT WARM SPRINGS; AUTHORIZING THE USE OF INMATE LABOR FOR CERTAIN PROJECTS; AMENDING SECTIONS 17-7-502, 53-1-202, 53-1-413, AND 90-7-317, MCA; AND PROVIDING EFFECTIVE DATES. 3234
- 558 (*House Bill No. 601; Somerville*) AN ACT REPEALING THE LICENSE REQUIREMENTS FOR PUBLIC CONTRACTORS; AMENDING SECTIONS 15-50-101, 15-50-205, 15-50-206, AND 18-1-106, MCA; REPEALING SECTIONS 37-71-101, 37-71-102, 37-71-103, 37-71-104, 37-71-105, 37-71-201, 37-71-202, 37-71-203, 37-71-204, 37-71-211, 37-71-212, 37-71-213, 37-71-301, AND 37-71-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE. 3238
- 559 (*Senate Bill No. 38; Benedict*) AN ACT ESTABLISHING THE JOB INVESTMENT ACT; AUTHORIZING THE DEPARTMENT OF COMMERCE TO ADMINISTER A PORTION OF THE PERMANENT COAL TAX TRUST FUND FOR LOANS TO BUSINESSES TO CREATE AND RETAIN JOBS; REVISING THE ADMINISTRATION OF PERMANENT

	TRANSMITTED TO SENATE		
3/27	REVISED FISCAL NOTE PRINTED		
3/27	FIRST READING		
3/27	REFERRED TO TAXATION		
3/30	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED		
4/05	2ND READING CONCURRED	50	0
4/06	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/08	SIGNED BY SPEAKER		
4/10	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 472		
	EFFECTIVE DATE: 10/01/95		

HB 546 INTRODUCED BY S. SMITH, ET AL.

RESTRICT STATE PARTICIPATION IN CERTAIN FEDERAL EDUCATION PROGRAMS UNLESS AUTHORIZED BY STATUTE

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/15	TABLED IN COMMITTEE		
2/16	FISCAL NOTE RECEIVED		
2/16	FISCAL NOTE PRINTED		
2/20	MOTION FAILED TO TAKE FROM COMMITTEE		
	AND PLACE ON 2ND READING	51	45
	(THIS MOTION REQUIRED APPROVAL OF 3/5 OF		
	VOTING MEMBERS IN ORDER TO PASS)		
2/23	MISSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 547 INTRODUCED BY CLARK, ET AL.

PROHIBIT, FOR THE REST OF THEIR LIVES, PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO JUDICIARY		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/15	FISCAL NOTE REQUESTED		
2/17	2ND READING PASSED	93	5
2/18	3RD READING PASSED	91	8
	TRANSMITTED TO SENATE		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/21	FIRST READING		
2/21	REFERRED TO JUDICIARY		
3/06	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	47	1
3/27	3RD READING CONCURRED	48	1
	RETURNED TO HOUSE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS NOT CONCURRED	94	5
4/04	FREE CONFERENCE COMMITTEE APPOINTED		
4/07	HEARING		

4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	96	4
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	98	2
	SENATE		
4/05	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	45	2
4/13	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 555		
	EFFECTIVE DATE: 10/01/95		

HB 548 INTRODUCED BY CAREY
PROVIDE FOR THE MONTANA HEALTH SECURITY SYSTEM

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO HEALTH CARE SELECT		
2/14	HEARING		
2/15	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
3/24	MISSSED TRANSMITTAL DEADLINE		
	DIED IN COMMITTEE		

HB 549 INTRODUCED BY SHEA, ET AL.
REVISE LAWS RELATING TO RETAIL BEER AND TABLE WINE RETAIL LICENSES FOR OFF-PREMISES CONSUMPTION

2/14	INTRODUCED		
2/14	FIRST READING		
2/14	REFERRED TO BUSINESS & LABOR		
2/15	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/18	2ND READING PASSED	75	20
2/20	3RD READING PASSED	76	23
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/08	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	39	0
3/13	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE		
3/15	SIGNED BY SPEAKER		
3/18	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 228		
	EFFECTIVE DATE: 03/24/95		

House BILL NO. 547

INTRODUCED BY

Clark Cole

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING, FOR THE REST OF THEIR LIVES, THE PURCHASE OR POSSESSION OF FIREARMS BY CERTAIN CRIMINALS; AMENDING SECTION 46-18-801, MCA; AND PROVIDING APPLICABILITY PROVISIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-18-801, MCA, is amended to read:

"**46-18-801. Effect of conviction -- civil disabilities.** (1) Conviction of ~~any~~ an offense ~~shall~~ does not deprive the offender of ~~any~~ a civil or constitutional ~~rights~~ right, except as provided in the Montana constitution or as they shall be specifically enumerated by the sentencing judge as a necessary conditions condition of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) ~~No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.~~

~~(3) When~~ Except as provided in the Montana constitution, if a person has been deprived of ~~any~~ of ~~his~~ a civil or constitutional ~~rights~~ right by reason of conviction for an offense and ~~his~~ the person's sentence has expired or ~~he~~ the person has been pardoned, ~~he shall be~~ the person is restored to all civil rights and full citizenship, the same as if ~~such~~ the conviction had not occurred."

NEW SECTION. Section 2. Unlawful possession of firearm by convicted person. (1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person has been convicted of one of the following offenses, convicted of solicitation of one of the following offenses, or convicted of an attempt or conspiracy to commit one of the following offenses and if the person purposely or knowingly purchases or possesses a firearm:

- (a) deliberate homicide, 45-5-102;
- (b) mitigated deliberate homicide, 45-5-103;
- (c) aggravated assault or felony assault, 45-5-202;
- (d) intimidation, 45-5-203;

- (e) a third or subsequent conviction of domestic abuse, 45-5-206;
- (f) a second or subsequent conviction of stalking, 45-5-220;
- (g) malicious intimidation or harassment, 45-5-221;
- (h) kidnapping, 45-5-302;
- (i) aggravated kidnapping, 45-5-303;
- (j) robbery, 45-5-401;
- (k) sexual intercourse without consent under 45-5-503(1) or (3)(b);
- (l) aggravated burglary, 45-6-204;
- (m) a felony not specifically listed in this subsection (1) for which the person received an additional sentence under 46-18-221; or
- (n) an offense under the law of another state or of the United States that is equivalent to an offense specifically listed in this subsection (1).

(2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned in a state prison for not less than 2 years or more than 10 years.

NEW SECTION. **Section 3. Lifetime firearms supervision of certain convicted persons.** (1) For the purposes of rehabilitation and public protection, a person convicted of an offense listed in [section 2] shall, as part of the sentence imposed, be sentenced to life supervision by the state for the purpose of restricting the person's right to purchase and possess firearms. Active supervision by a probation or parole officer is not required but may be imposed by the court. "Supervision" means that the person may not violate [section 2] and must comply with other state and federal law restrictions on the purchase and possession of firearms.

(2)(a) A person subject to subsection (1) may apply to the district court for the county in which the person resides for a permit to purchase and possess one or more firearms. The person shall show good cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of the application does not prevent the person from making another application, except that if an application is denied, another application may not be made for the next 12 months.

(b) The application must contain the following information:

- (i) the person's full name and any past or present aliases;
- (ii) the person's date and place of birth;

1 (iii) the person's address;

2 (iv) the person's occupation;

3 (v) the make and model of each firearm sought to be purchased and possessed;

4 (vi) the date and place of each conviction of an offense listed in [section 2], the name of the
5 offense, the state and county in which the offense occurred, the sentence imposed, the place or places of
6 incarceration, and the date of discharge from supervision for the last offense;

7 (vii) the name and business address of the person's last probation or parole officer; and

8 (viii) any other information considered necessary by the court.

9 (c) The person shall, at the time of filing the application with the court, mail a copy to the county
10 attorney and county sheriff.

11 (d) The county attorney or county sheriff may file a written objection with the court. If no
12 objection is filed, the court may grant the permit if it finds that the person has shown good cause to
13 purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing
14 must be held within 60 days after the filing of the objection. If the court first finds that the person has
15 shown good cause to purchase and possess the firearm or firearms listed in the application and that, but
16 for the objection, the court would have granted a permit, the court shall decide whether the objection is
17 valid and overrides the good cause showing and requires denial of the permit.

18
19 **NEW SECTION. Section 4. Codification instruction.** [Sections 2 and 3] are intended to be codified
20 as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45 apply to [sections 2 and 3].

21
22 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are
23 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
24 applications, the part remains in effect in all valid applications that are severable from the invalid
25 applications.

26
27 **NEW SECTION. Section 6. Applicability.** (1) [Section 2(1)] does not apply to a person convicted
28 of an offense listed in [section 2(1)] before [the effective date of this act].

29 (2) [Section 3] applies only to sentences imposed after [the effective date of this act].

-END-

HOUSE JUDICIARY

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- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0457	VICK, STEVE		PROHIBIT THE POSSESSION AND CONSUMPTION OF TOBACCO PRODUCTS BY MINORS					
	2/07	2/13		PASS AS AMENDED	2/13	VOTE: 17-0		2/14
HB0474	COBB, JOHN		PROVIDE FOR TRAINING FOR JUVENILE PROBATION OFFICERS					
	2/08	2/13		PASS AS AMENDED	2/13	VOTE: 17-0		2/14
HB0482	GRIMES, DUANE		PARENTAL NOTIFICATION OF ABORTION					
	2/08	2/14		DO PASS	2/15	VOTE: 13-6		2/15
HB0491	BRAINARD, MATT		CLARIFY THAT SHERIFF IS CHIEF LAW ENFORCEMENT OFFICER OF A COUNTY					
	2/10	2/14		DO PASS	2/17	VOTE: 16-2		2/17
HB0496	BOHLINGER, JOHN		PROVIDE SUBROGATION RIGHTS AGAINST LIABLE THIRD PARTY					
	2/10	2/14		TABLED ON	02/14	VOTE: 18-0		
HB0497	BOHLINGER, JOHN		MODIFY PROPERTY TAX ASSISTANCE PROGRAM POLICY & APPLICATION DATE					
	2/09					VOTE:	TAXATION	
HB0501	ANDERSON, SHIELL		REQUIRE WRITTEN UNDERTAKING IN ACTION FOR INJUNCTION RE LAND BOARD DECISION					
	2/09	2/14		DO PASS	2/17	VOTE: 11-6		2/17
HB0505	COBB, JOHN		PARENTAL ASSESSMENT FOR YOUTH COURT COSTS					
	2/09	2/14		TABLED ON	02/17	VOTE: 11-7		
HB0517	KOTTEL, DEB		INTEREST ON CERTAIN JUDGMENTS TO STATE GENERAL FUND					
	2/10	3/06	POSTPONE ACTION 3/13	PASS AS AMENDED	3/9	10-7		
			RECONSIDERED 3/13	PASS AS AMENDED	3/15	VOTE: 12-7		3/16
HB0540	MOLNAR, BRAD		GENERALLY REVISE YOUTH COURT ACT					
	2/13	2/14		PASS AS AMENDED	2/16	VOTE: 11-7	APPROPRIATIONS	2/17
HB0543	WAGNER, DOUGLAS		REVISE SECURITY FOR SEEKING INJUNCTION OR RESTRAINING ORDER					
	2/13	2/15		PASS AS AMENDED	2/16	VOTE: 11-7		2/17
HB0547	CLARK, ROBERT		LIFETIME GUN SUPERVISION FOR CERTAIN CRIMINALS					
	2/14	2/14		DO PASS	2/15	VOTE: 19-0		2/15

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 14, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: Rep. Liz Smith

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 496, HB 482, HB 501, HB 540, HB 380,
HB 491, HB 450, HB 505, HB 547
Executive Action: HB 496 TABLE

Proponents' Testimony:

Hank Hudson, Director, DFS, supported this bill since it appeared to be a way to provide additional incentives for youth courts to aggressively pursue reimbursement as a well as a way to encourage communities to develop additional services.

Judge Larson spoke in support of the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. GRIMES asked if this section was changed last session.

Ms. Gilke thought it was amended in 1991 to make it consistent with child support enforcement.

REP. TASH asked if the sponsor would work with John MacMaster to draft conceptual amendments with regard to abuse and neglect and probation.

REP. COBB explained which sections needed the new language and that he would meet with Mr. MacMaster to do that.

Closing by Sponsor:

REP. COBB closed.

CHAIRMAN CLARK relinquished the chair to REP. GRIMES.

HEARING ON HB 547

Opening Statement by Sponsor:

REP. BOB CLARK, HD 8, presented HB 547 which had been requested by the Department of Corrections and Human Services (DCHS). It would prohibit the possession of firearms by convicted felons. Originally it was drafted as HB 70 as a Constitutional Amendment. This bill would mean lifetime registration of felons who had been convicted of violent crimes. Currently the Montana Constitution allows a person, regardless of the crime committed, to possess a firearm once their sentence has been completed. Federal laws do not allow a convicted felon to possess a firearm. Most other states do not allow it. Some movement of felons from other states can be attributed to their knowledge that they can possess a firearm in Montana. The bill spelled out which crimes are covered and also dealt with felonies not specifically listed which would bring persons committing additional crimes under the same law. It allowed for one deviation in that a person could petition the court to allow them to have a firearm. If the court

allowed it and there was no objection from the county attorney or from the law enforcement official where they were convicted, they could be issued a permit to possess certain firearms.

Proponents' Testimony:

Dave Ohler, DCHS, said the department hadn't had an opportunity to review the bill, but the department did support the concept.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC CULLOCH asked for clarification of the section which would allow a person to petition the court for a permit for a firearm.

REP. CLARK pointed out page 3, line 11 and the new subsection 2 on page 2.

REP. LIZ SMITH asked for an example of a good cause for a convicted felon to carry a firearm.

REP. CLARK said the term, "carry," was one thing and the term, "possess," was another. Possession was what they were dealing with in the bill and it would cover hunting firearms.

REP. MC GEE asked how it would dovetail with a bill which had been drafted dealing with lifetime registration of violent offenders.

REP. CLARK preferred that the two bills be carried separately. This bill did not deal with lifetime registration, but rather lifetime supervision.

Closing by Sponsor:

REP. CLARK said he had overlooked the portion which dealt with the situation where a person was denied a permit and that they could not apply again for a 12-month period.

CHAIRMAN CLARK resumed the chair and announced the schedule for the coming days.

Motion: REP. MC GEE MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ <i>late</i> ^{8:20}	✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ ☺		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith		✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 15, 1995, at 8:05 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 551, HB 543
Executive Action: HB 357 DO PASS
HB 482 DO PASS
HB 547 DO PASS
HB 160 DO PASS AS AMENDED
HB 356 DO PASS AS AMENDED

Motion/Vote: REP. CURTISS MOVED TO AMEND BY RE-INSERTING THE LANGUAGE ON LINES 2 AND 3 IN AMENDMENT 16, "THE INDIVIDUALS INVOLVED MUST BE CHARGED WITH ANY OTHER APPLICABLE CRIMINAL OFFENSES IN TITLE 45." The motion carried 14 - 5. REPS. CAREY, SHEA, MC CULLOCH, KOTTEL and HURDLE voted no. (REPS. HURDLE, GRIMES and KOTTEL voted by proxy.)

Motion/Vote: REP. ANDERSON MOVED HB 160 DO PASS AS AMENDED. The motion carried 13 - 6. REPS. WYATT, CAREY, KOTTEL, MC CULLOCH, SHEA, and HURDLE voted no. (REPS. GRIMES and HURDLE voted by proxy.)

EXECUTIVE ACTION ON HB 547

Motion: REP. MC GEE MOVED HB 547 DO PASS.

Discussion: REP. MOLNAR asked what conviction would result in that sort of penalty.

CHAIRMAN CLARK said that beginning on line 27 through line 12 on page 2 there was a list of the crimes.

REP. MOLNAR asked if intimidation was included as well as malicious harassment or robbery as well as others which would take away constitutional rights for minor offenses.

CHAIRMAN CLARK said those offenses are considered violent. He went on to explain the crimes and the reasons for them to be included.

Mr. MacMaster said that intimidation is included on line 30 because the drafters had studied the language nationwide in similar bills and had consulted with one another to reach agreement. The intent of the bill was to say that part of the sentence for commission of the crime is sentencing to lifetime supervision for firearms purposes. The three drafters jointly believed that the offenses listed would hold up in court. A severability clause was included on page 3, line 22 for the court's discretion in imposing the sentence.

REP. TREXLER expressed concern about the inclusion of sexual intercourse without consent in the crimes listed under the provisions of this bill.

CHAIRMAN CLARK said that referred to the rape statutes which covered everything from violent rape to date rape. That concern was addressed by the provision in the bill that an individual can appeal to the court after they have served their sentence. The judge could exercise discretion to allow a person to apply for a permit to possess a firearm if it was a date rape situation, for instance, without violence.

Vote: The motion carried 19 - 0.

Motion: REP. ANDERSON MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 547 (first reading copy -- white) do pass.

Signed: Bob Clark
Bob Clark, Chair

Committee Vote:
Yes 19, No 0.

391245SC.Hbk

SENATE JUDICIARY

Page

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

HB0491	BRAINARD, MATT	CLARIFY THAT SHERIFF IS CHIEF LAW ENFORCEMENT OFFICER OF A COUNTY	3/20	3/22					
	2/21	3/20		CONCUR AS AMENDED	VOTE:				3/23
HB0501	ANDERSON, SHIELL	REQUIRE WRITTEN UNDERTAKING IN ACTION FOR INJUNCTION RE LAND BOARD DECISION		3/13					
	2/21	3/09		CONCUR	VOTE:				3/14
HB0540	MOLNAR, BRAD	GENERALLY REVISE YOUTH COURT ACT		3/27					
	3/24	3/27		CONCUR	VOTE:				3/28
HB0547	CLARK, ROBERT	LIFETIME GUN SUPERVISION FOR CERTAIN CRIMINALS	3/7, 3/15	3/20					
	2/21	3/06		CONCUR AS AMENDED	VOTE:				3/21
HB0551	CLARK, ROBERT	DNA TESTING OF SEX OFFENDERS AND VIOLENT OFFENDERS; RECORDS TO BE KEPT		3/13					
	2/21	3/10		CONCUR	VOTE:				3/14
HJ0014	GREEN, DICK	RESOLUTION; PREVENT LAW STUDENTS FROM SUING GOVERNMENT FOR PRISONERS		3/08					
	2/20	3/07		CONCUR	VOTE:				3/09
HJ0027	MCCANN, MATT	URGE ADOPTION OF ITEM VETO		3/22					
	3/15	3/20		CONCUR	VOTE:				3/23
SB0001	GAGE, DELWYN	CODE COMMISSIONER BILL		1/9					
	1/02	1/05		DO PASS	VOTE:				1/09
SB0006	CRIPPEN, BRUCE	RETAIN 7-MEMBER SUPREME COURT		1/10					
	1/02	1/10		DO PASS	VOTE:				1/10
SB0007	KLAMPE, TERRY	CLARIFY MEDICAL CLAIMS STATUTES OF LIMITATIONS		1/06					
	1/02	1/06		DO PASS	VOTE:				1/06
SB0010	GAGE, DELWYN	GIVE STATE A RIGHT TO JURY TRIAL IN ALL CRIMINAL CASES		1/09					
	1/02	1/05		DO PASS	VOTE:				1/09
SB0013	HALLIGAN, MIKE	REVISE MANNER TO GIVE NOTICE TO DRIVER WHEN LICENSE OR PRIVILEGES SUSPENDED		2/02					
	1/02	1/06	1/10	PASS AS AMENDED	VOTE:	JUDICIARY			1/06

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 6, 1995,
at 9:00 a.m.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 41, HB 176, HB 231, HB 547
Executive Action: HB 176, HB 231, HB 234, HB 41, SB 387

HEARING ON HB 176

Opening Statement by Sponsor:

REPRESENTATIVE TONI HAGENER, House District 90, Havre, presented HB 176. This bill is brought at the request of the Judicial Unification and Finance Commission which was created in the 1993 Legislative Session in response to concerns raised by the State Bar of Montana and the Montana Association of Counties that Montana's courts were running out of money. Thirty six of Montana's counties were experiencing district court funding problems. To address these issues, the district court funding committee recommended that the legislature initiate a thorough examination of court unification and finance. HB 525 passed in

HEARING ON HB 547Opening Statement by Sponsor:

REPRESENTATIVE BOB CLARK, House District 8, Ryegate, presented HB 547 which is a bill aimed at stopping the possession of firearms by convicted, violent felons. Currently our Constitution allows a person, regardless of what they have been convicted of, to possess a firearm once they have completed their sentence. When a person completes his sentence and parole, all of his rights are restored. If a person has been convicted of a violent felony, he should never be allowed to own or possess a firearm. He had intended to sponsor HB 70, which was a constitutional amendment to do the same thing. Rather than place another amendment on the ballot in 1996 which would not become effective until 1997, they decided to go ahead with HB 547. It puts the violent felon under state supervision for the rest of his life.

Proponents' Testimony:

Moria Murphy stated that currently, under Montana law, once a person is off of state supervision and has been convicted of a violent felony, they can legally possess a firearm. Montana is the only state which allows a convicted felon to possess a firearm automatically. Most people who have been convicted of a violent felony recidivate. Statistics show that 60% of violent offenders will be rearrested once they leave prison and about half will be reconvicted of a violent felony. Quite often firearms are used in the commission of those offenses. There is a good public policy reason for this bill. At first a constitutional amendment was proposed to achieve this; however, a convicted felon can be constitutionally limited to no longer possess a firearm. The Constitution states that once a person is off state supervision, they automatically have their rights returned to them. Under this bill, that person never has their rights returned to them for purposes of firearm control because state supervision never ceases for purposes of firearm control. This bill is constitutional because state supervision can be extended for a lifetime for a person who has been convicted of a violent felony. She consulted defense attorneys, other prosecutors, and law professors when drafting this bill. Everyone believed this bill to be constitutional. HB 547 not only limits the violent offender from possessing a firearm, it also makes it a new offense. They can be sentenced from two to ten years. The federal government cannot prosecute a person for possessing a firearm because Montana law does not prohibit such a person from possessing a firearm. If this bill is passed, the federal government would be able to prosecute under the Federal Gun Control Act. This would mean these felons could go to federal prisons. This bill does not prohibit people who have been convicted of non-violent felonies from possessing a firearm. If the person feels that they do have a specific reason for possessing a firearm, they can go through a petition procedure

before the state district court where they reside. If the prosecutor who convicted the person or the prosecutor's office or the law enforcement agency that investigated the person's crime opposes the person possessing a firearm, the petition will not be granted. She presented her written testimony, **EXHIBIT 3**.

Beth Baker, Department of Justice, commented that after the Congress passed the Brady law, Attorney General Mazurek appointed a working group to people to study and make recommendations on how to deal with that law in Montana. The working group included representatives of law enforcement agencies, gun owners and gun dealers. One of their recommendations, which passed unanimously, was to support legislation to restrict the possession of firearms by violent felony offenders. This bill applies only to violent offenders. It provides a process for petitioning for a waiver so that in specific circumstances, if the court finds it appropriate, the restriction can be waived. She proposed an amendment, **EXHIBIT 4**. This is in response to a decision issued by the Montana Supreme Court on February 24. The case was **United States v. Brooks**, which was a question certified by the Federal District Court to the Montana Supreme Court. The defendant had been charged with violation of the federal law which prohibits felons from possessing firearms. Because the federal law is dependent on the state law, the district court asked the Montana Supreme Court whether the defendant was prohibited, under Montana law, from possessing a firearm. The sentencing order had not specifically stated that the defendant was prohibited from possessing firearms, but had ordered the defendant to abide by all rules imposed in the conditions of probation. A standard condition of probation is that the defendant shall not possess firearms. The Montana Supreme Court said that because § 46-18-801, MCA, requires specific enumeration of the conditions, that was not good enough and the defendant could not be convicted of a federal firearms offense. The Court was divided on the issue. It was the opinion of three justices, concurred in by two other justices, and a dissent by the Chief Justice and one of the other members. The amendments would allow the sentencing judge to incorporate by reference the rules of the probation office or the board of pardons. If the judge orders the defendant to comply with the rules of probation, that will be considered a specific element of the sentence. She has discussed the amendments with **REPRESENTATIVE CLARK**. He has discussed the concept with the Chief Justice and has advised her that he would like some time to look it over.

Chuck O'Reilly, Sheriff of Lewis and Clark County, Montana Sheriffs and Peace Officers Association, urged support of the bill.

Dave Ohler, Legal Counsel for the Department of Corrections and Human Services, stated the Department supports HB 547 as well as the amendments proposed by Ms. Baker.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

SENATOR BAER asked REPRESENTATIVE CLARK if he approved of the amendments.

REPRESENTATIVE CLARK asked the committee to hold off on executive action until he could talk to Chief Justice Turnage.

Closing by Sponsor:

REPRESENTATIVE CLARK stated the three strikes and you are out bills will solve some of the problems associated with violent felons and firearms. These laws will keep felons where they belong. Section 3 (2) contains an appeal process. If someone believes they need a firearm, they can appeal to the sentencing court for relief to own a firearm.

HEARING ON HB 231

Opening Statement by Sponsor:

REPRESENTATIVE BOB PAVLOVICH, House District 37, Butte, presented HB 231. This corrects an oversight made in the 1993 Legislative Session. The amendment attempted to set identical fees for entry of judgment but overlooked the statute for the confession of judgment.

Proponents' Testimony:

Bob Gilbert, Montana Clerks of District Court, stated this is a housekeeping bill. The fee was completely overlooked. It brings it in line with the other fees.

Opponents' Testimony:

Nancy Sweeney, Clerk of District Court for Lewis and Clark County, appeared on behalf of the Montana Association of Clerks of District Court. This legislation will make collection of fees for entry of judgment uniform. This bill will not affect state revenues at all. Lewis and Clark is one of the larger counties and would have received an additional \$80 during the calendar year 1994. The Association requests this change simply to make collection of judgment fees uniform. In 1993 the legislature attempted to standardize the fee collected for entry of judgment. The fee for a transcript of judgment was amended from a specific fee of \$25 to "the fee for entry of judgment provided for in (1) (c), MCA." The provision made the fee for entry of judgment consistent in the general fee statute. It did not include a reference to §27-9-103, MCA, regarding confessions of judgment.

DATE _____

3-6-1995

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TESTIMONY OF MOIRA MURPHY IN SUPPORT OF HB 547

- 1. MONTANA LAW DOES NOT PROHIBIT A CONVICTED FELON FROM POSSESSING A FIREARM AFTER STATE SUPERVISION CEASES.** Presently in Montana, a person convicted of a violent felony can legally possess a firearm as soon as state supervision ends. So when he gets out of prison and is released from parole, he can possess firearms. Montana law does nothing to prohibit a violent convicted felon from possessing firearms.
- 2. CANNOT PROSECUTE UNDER FEDERAL LAW EITHER .** Since Montana law does not prohibit a convicted felon from possessing firearms, the feds cannot prosecute under the Federal Gun Control Act either.
- 3. OTHER STATES LIMIT A VIOLENT CONVICTED FELON FROM POSSESSING FIREARMS.** Every other state besides Montana limits a convicted rights to possess firearms to a certain extent following state supervision. In Montana, the felon automatically and immediately has the right to possess firearms following state supervision.
- 4. OTHER STATES LIMIT VIOLENT CONVICTED FELONS FROM POSSESSING FIREARMS BECAUSE MOST FELONS RECIDIVATE.** The Bureau of Justice Statistics reports that 60% of violent offenders will be rearrested. About half of those people will be convicted of violent offenses, such as murder, rape, robbery, or assault. Guns are often used in the commission of these offenses, according an Alcohol, Tobacco, and Firearms study on Armed Career Criminals.
- 5. WE CAN CONSTITUTIONALLY LIMIT A CONVICTED FELON'S RIGHT TO POSSESS A FIREARM.** The right to bear arms is not absolute and can be limited. This has been upheld by numerous courts. In addition, under HB 547 a convicted felon would always be under state supervision for purposes of gun control. Therefore, HB 547 is not violative of the Article II, Section 28 of the Montana Constitution, which provides that full political and civil rights will be restored to offender when state supervision ceases. State supervision never ceases for gun control for violent convicted felons, therefore, HB 547 is not unconstitutional.
- 6. WHAT HB 547 PROVIDES.**

A person convicted of a "violent felony" in any jurisdiction will be prohibited from possessing a firearm in Montana. The violent felonies are listed: for example, deliberate homicide, aggravated assault, sexual intercourse without consent. Non violent felonies, such as bad checks, and forgery are^{not} included as violent felonies.

Both the state and federal system may prosecuted a convicted felon for possessing a firearm.

The time period of prohibition is unlimited.

A petition procedure for a special permit to possess a firearm is provided. A convicted felon may apply for a special permit through a state district court as soon as he is off state supervision. The convicting law enforcement agency and prosecutor's officer will be able to protest the granting of the petition.

B 547

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 3/6/95

BILL NO. HB 547

Amendment to House Bill 547
Third Reading Copy (Blue)

Requested by Department of Justice
Prepared by:
Beth Baker, Department of Justice

Title, line 5.

Following: "CRIMINALS;"

Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY
REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR
SUPERVISED RELEASE;"

Page 1, line 14.

Following: "society."

Insert: "The sentencing order may incorporate by reference
the rules setting conditions of probation, parole, or supervised
release promulgated by the department of corrections and human
services or the Montana board of pardons without specifically
enumerating the conditions."

DATE 3/6/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 41 HB 231
HB 176 HB 547

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Check One

Name	Representing	Bill No.	Support	Oppose
Nancy Sweeney	Montana Association of Clarks & District Court	HB 176 HB 231	X	
Chuck O'Reilly	MT. Shanks & Peden Officers Union	HB 547	X	
Maria Murphy	Missoula City Attorney	HB 547		
Beth Baker	Dept. of Justice	HB 547	✓	
Josef Koch	Collection Bureau ^{Service}	HB 176		X
Gary Spzeth	ST Bar	HB 176	X	
Gordon Morris	MTAC	176	X	
Joe L. Carl	Dist 36	176	X	
David Henion	MT 330C Mental Health #330C	41	✓	
Gloria Peterson	MT Psych. Assoc	41	✓	
Carl L. Keener MD	MSH	41	✓	
Don ASHABRAMER	State Farm Ins.	HB 176		✓
PATRICK CHENOVICK	MT SUPREME CT	HB 176	✓	
Deane Ohler	Corrections	HB 547	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By ACTING CHAIRMAN AL BISHOP, on March 20, 1995,
at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 444, HB 491, HB 340, HJR 27
Executive Action: HB 444, HB 340, HB 323, HB 547, HB 332,
HB 160, HB 160 (Minority Report)
HB 491 - discussion

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 491

Opening Statement by Sponsor:

REPRESENTATIVE MATT BRAINARD, House District 42, Missoula, sponsored HB 491, which he said was a short and simple bill. He said it was presented in the House Judiciary Committee without either proponents or opponents. The bill would clarify that the sheriff is the chief law enforcement officer of the county. Under some federal laws proposed, they refer to the, "chief law enforcement officer." This is complicated by the fact that there

EXECUTIVE ACTION ON HB 323

Motion: SENATOR BAER MOVED THAT HB 323 BE RECOMMENDED CONCURRED IN.

Discussion: SENATOR BAER stated that if HB 232 would pass the Governor's office, this bill would be redundant. SENATOR BISHOP asked if this bill was brought in light of the Brady bill. SENATOR BAER replied that it was, but the bill would not contravene the Brady bill in any way. It would exempt the people who have a concealed weapon from being subject to the five-day waiting period required by the Brady bill. But the bill would be satisfied entirely because the check-out requirements under a concealed weapon permit are far more stringent and broader than those required by the Brady bill, so it would not be offended.

Vote: The MOTION CARRIED UNANIMOUSLY on an oral vote. SENATOR BAER offered to carry the bill.

EXECUTIVE ACTION ON HB 547

Discussion: Valencia Lane explained that the committee had already adopted one set of amendments previously (EXHIBIT 6), and another set was presented by SENATOR BAER (EXHIBIT 7). SENATOR BAER said these amendments were submitted by the sponsor. There were dangers to having a laundry list of crimes, he said. On Page 2, Line 9, item (m), they list the Section which would require that any person that committed a felony with the use of a firearm would be banned for life under the direction of the bill.

Motion: SENATOR BAER MOVED THAT THE HB 547 BE FURTHER AMENDED BY INCLUDING THE 7 AMENDMENTS AS CONTAINED IN HB054703.AVL (EXHIBIT 7).

Discussion: Beth Baker, representing the Department of Justice, clarified that originally the bill came out of the recommendations of the Brady law at the request of the Attorney General's Office. That working group suggested that all convicted violent felons be prohibited from possessing firearms. This is a policy judgement for the legislature to make, she said, and stated their department was not going to take a position on the amendments. The amendment would narrow the class of offenders who would be prohibited from possessing firearms and only apply to those who had been previously sentenced. It would not apply to the people convicted of the list of offenses now specified in Section 2, but had not been sentenced for using a firearm. It would not cover a person who had committed rape, for example. She thought the public ought to understand that. SENATOR BAER said he would not be adverse to incorporating anyone who committed a dangerous felony, but he felt that was not what the sponsor of the bill had intended. He said under federal law

a person would not be allowed to own a firearm if convicted of a felony, not necessarily even a dangerous felony, and it would prevent them from lawfully purchasing a firearm. He did not see much of a conflict. **CHAIRMAN CRIPPEN** asked what 46-18-221 was. **Beth Baker** stated that it was an enhanced penalty that may be used if the sentencing court makes a finding that a person used a dangerous weapon. In answer to whether this would satisfy her concerns, she said it would still apply to a smaller class of violent offenders than if the amendment were not adopted. The bill would apply to all those offenses whether they were committed with a dangerous weapon or not. There were two reasons the amendments were narrowing the group of offenders: 1) this section, 46-18-221 only applies where the person did use a dangerous weapon, and 2) it only applies when the person is sentenced under that provision. Often, in a plea bargaining situation, they will agree that they won't get an additional sentence so they can get them to plea bargain another offense. She didn't know how much difference it would make, she just thought they should understand. **SENATOR BAER** said he took no position, but thought the intent of the sponsor should be given preference over the Department of Justice. **CHAIRMAN CRIPPEN** expressed concern over the exclusion of some crimes, such as aggravated assault, because of the exclusion in the amendments. He suggested passing the amendments and notifying the House of the concerns. **SENATOR DOHERTY** said they should also listen to the policy judgements of the department, and also should decide whether to narrow or expand the ability to prohibit convicted felons of owning a firearm. He felt any convicted felon gave up a lot of rights in committing a crime, one of which should be the right to own a firearm. He did not want to narrow the scope of the bill. **CHAIRMAN CRIPPEN** said they could agree on Item # 1 of the amendments.

Motion/Vote: IN A SUBSTITUTE MOTION, SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEM # 1 OF HB054703.AVL. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR BAER MOVED TO AMEND HB 547 BY AMENDMENT ITEMS 2-7 OF THE AFOREMENTIONED DOCUMENT. The MOTION FAILED on an oral vote.

Discussion: Beth Baker explain that because they did not pass amendment item # 2, amendment # 1 would remove some language on Lines 25 and 26. They would have to strike, "following offenses," on Line 25, and "if a person knowingly. . .," **CHAIRMAN CRIPPEN** stated that they would have to further amend the bill to strike the identical language on Line 25 and 26.

Motion/Vote: SENATOR BAER MOVED THE AMENDMENT AS STATED BY THE CHAIRMAN. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR BAER MOVED THAT HB 547 BE RECOMMENDED CONCURRED IN AS AMENDED. The MOTION CARRIED on an oral vote with

SENATOR BARTLETT voting no. SENATOR BAER had agreed to carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 160

Motion: SENATOR HOLDEN MOVED TO AMEND HB 160 AS CONTAINED IN HB016001.AVL (EXHIBIT 8) FOR THE PURPOSES OF DISCUSSION.

Discussion: SENATOR HOLDEN explained that he thought the bill was good with the exception of prosecuting the FBI agents and federal marshals. He didn't think the state would stand much of a change in those actions. He did believe that the phone call should be made to the local sheriff unless it was to investigate their (sheriff's) office. Another part of the amendments had to do with the written notice. He thought the notice could be by phone or written. On Page 2, Line 14, where the bill referred to notice, he thought they could strike the word, "written," and insert, "give notice." That was it would not tie the hands of federal employees to make a written notice when it may be a snap decision to go into a drug transaction, for example. CHAIRMAN CRIPPEN summarized the amendments as to two items: 1) striking the requirement that there be written notice, and 2) giving the option of the 24-hours' notice to either written or oral. SENATOR HOLDEN said the phone system may provide documentation of the notice by phone. He discussed the amendments by Gary Marbut, which were also presented to the committee. (EXHIBIT 9). SENATOR BAER stated that some atrocities had been committed by regulatory agencies, but that 95 per cent are probably forthright, law-abiding agencies. But, he said, in some incidences, the Constitution was trampled. When that takes place without the proper legal provisions allowing them search and seizure, these and the subsequent behaviors are criminal acts. He said the federal agents should be prosecuted for criminal acts when they act without authority and without Constitutional backing because they are acting outside the scope of the Constitutional provisions whether they are federal employees or not. SENATOR HOLDEN asked if, before a FBI agent can bust the door down to a house to check for drugs, did he have to have a search warrant from a federal judge? CHAIRMAN CRIPPEN said yes, unless there is exigent circumstances, or strong probable cause that a person would have committed a federal crime and would be in danger of fleeing. SENATOR HOLDEN asked if a search warrant was necessary, wouldn't it be common sense that the federal law would supersede any state statute that might pass? CHAIRMAN CRIPPEN said if the FBI agent should willfully and maliciously act outside the course of the scope of his jurisdiction, they would be subject to federal penalties and maybe even state penalties. This bill deals with notice, he said, so if they did not give notice, they would be subject to penalties. He was concerned that the crime itself would be not be definable. He did not think it could be proven. SENATOR HALLIGAN said he did not know how they would then attach a civil right to the failure to provide a procedural safeguard notice or what the damages

DATE 3-20-95

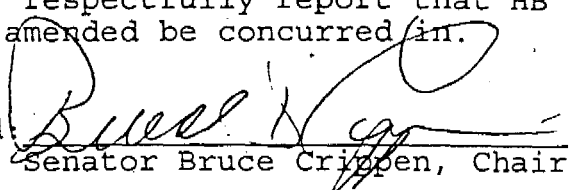
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 547 (third reading copy -- blue), respectfully report that HB 547 be amended as follows and as so amended be concurred in.

Signed: 
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 5.

Following: "CRIMINALS;"

Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY
REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR
SUPERVISED RELEASE;"

2. Page 1, line 14.

Following: "society."

Insert: "If the sentencing judge incorporates by reference in the
sentencing order rules of the department of corrections and
human services or the board of pardons setting conditions of
probation, parole, or supervised release with which the
offender is required to comply, the incorporation by
reference constitutes a specific enumeration of the
conditions for purposes of this section."

3. Page 1, line 23.

Following: second "person"

Insert: "purposely or knowingly purchases or possesses a firearm
after the person"

4. Page 1, lines 25 and 26.

Following: "offenses" on line 25

Strike: remainder of line 25 through "firearm" on line 26

5. Page 3, line 27.

Following: "Applicability"

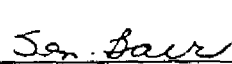
Insert: "-- retroactive applicability"

6. Page 3, line 30.

Insert: "(3) [Section 1] applies retroactively, within the
meaning of 1-2-109."

-END-

 Amd. Coord.
Sec. of Senate


Senator Carrying Bill

641412SC.SRF

Amendments to House Bill No. ~~547~~ HB 547
Third Reading Copy (blue)

For the Committee on Judiciary

Prepared by Valencia Lane
March 7, 1995

*already
adopted
by Jud Comm*

1. Title, line 5.

Following: "CRIMINALS;"

Insert: "ALLOWING THE SENTENCING ORDER TO INCORPORATE BY
REFERENCE RULES SETTING CONDITIONS OF PROBATION, PAROLE, OR
SUPERVISED RELEASE;"

2. Page 1, line 14.

Following: "society."

Insert: "If the sentencing judge incorporates by reference in the
sentencing order rules of the department of corrections and
human services or the board of pardons setting conditions of
probation, parole, or supervised release with which the
offender is required to comply, the incorporation by
reference constitutes a specific enumeration of the
conditions for purposes of this section."

3. Page 3, line 27.

Following: "Applicability"

Insert: "-- retroactive applicability"

4. Page 3, line 30.

Insert: "(3) [Section 1] applies retroactively, within the
meaning of 1-2-109."

Amendments to House Bill No. 547
Third Reading Copy (blue)Requested by Senator Baer
For the Committee on JudiciaryPrepared by Valencia Lane
March 15, 1995

1. Page 1, line 23.
Following: second "person"
Insert: "purposely or knowingly purchases or possesses a firearm
after the person"
2. Page 1, line 24 through page 2, line 9.
Following: first "convicted of" on line 24
Strike: remainder of line 24 through "(m)" on page 2, line 9
Insert: ": (a)"
Renumber: subsequent subsection
3. Page 2, line 9.
Following: "felony"
Strike: "not specifically listed in this subsection (1)"
4. Page 2, line 12.
Strike: "specifically listed in this subsection (1)"
Insert: "that when committed in Montana is subject to an
additional sentence under 46-18-221"
5. Page 2, line 17.
Strike: "listed"
Insert: "referred to"
6. Page 3, line 4.
Strike: "listed"
Insert: "referred to"
7. Page 3, line 28.
Strike: "listed"
Insert: "referred to"